In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.4114 of 2006.
Date of decision:10.12.2007.

Partap Singh.

...Petitioner.

Versus

State of Haryana and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice Satish Kumar Mittal.

Hon'ble Mr.Justice K. C. Puri.

Present: Mr. Tejinder Singh Dhindsa, Advocate for the petitioner.

Mr. Randhir Singh Khandu,AdditionalAG Haryana for respondent No.1.

Mr. M.S. Sandhu Advocate for respondent Nos.2 and 3.

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K. C. Puri, J.

Challenge in this writ petition is to the order dated 6.3.2006, Annexure P10, vide which departmental proceedings were initiated against the petitioner.

The petitioner was working as Secretary, Improvement Trust, Karnal and retired on 31.10.1995 on attaining the age of superannuation i.e. 58 years. Vide impugned order dated 6.3.2006, the Secretary, Improvement Trust, Karnal on the basis of order of Financial Commissioner and Principal Secretary to the Government, Haryana, Urban Development Department,

Chandigarh dated 12.1.2006 intended to initiate disciplinary proceedings against the petitioner. One M/s Piara Lal Kuldip Kumar filed Ciil Writ petition No.5370 of 1975 for allotment of big show room in Scheme No.37. The Improvement Trust made a statement in the High Court and the Civil Writ petition was disposed of in the year 1976. Piara Lal filed an application dated 29.7.1976 addressed to Chairman, Improvement Trust and claimed allotment of show room as per undertaking in the Hon'ble High Court. The Chairman, Improvement Trust, allotted shop No.1 in Scheme No.37 as per undertaking given in the High Court. M/s Piara Lal Kuldip Kumar preferred an appeal before the Financial Commissioner and Principal Secretary to Government of Haryana, Urban Development Department, Chandigarh Annexure R2/1, about 20 years of the allotment of the shop in favour of Piara Lal. It was observed by Shri N. Bala Baskar, IAS, Financial Commissioner and Principal Secretary to Government, Haryana that since the undertaking was in respect of allotment of show room to M/s Piara Lal Kuldip Kumar but the shop has been allotted to Piara Lal, so on that count, Trust should enquire and fix responsibility on the employee/authorities responsible for non compliance of the agreement/undertaking given before the High Court. In compliance to that order, the present show cause notice has been issued.

We have heard both sides and have gone through the record of the case.

The impugned order, Annexure P10, does not sustain the test of legal scrutiny on the following grounds;-

(a) The allotment of the shop in favour of Piara Lal was made

in the year 1976. The petitioner retired from service as Secretary, Improvement Trust, Karnal on 31.10.2005. According to Rule 4(1) of the Punjab Town Improvement Trust Surcharge Rules, 1961(in short 1961 Rules) and amended Rules of Haryana Government (in short 1978 Rues), proceedings can be initiated within four years of the loss or mis-appropriation by the employee or upto one year of ceasing to be employee of the Trust. The relevant Rules are reproduced as under;-

"4(1) of 1961 Rules.

4(1) After the expiry of period allowed for furnishing explanation and after considering the explanation, if any, the Examiner may surcharge the Chairman, Trustee or Servant, as the case may be, with the whole or part of the sum for which the Chairman, Trustee or Servant shall be liable:

Provided that no Chairman, Trustee or Servant shall be liable for any loss, waste or mis-appropriation after the expiry of four years from the occurrence of such loss, waste or mis-appropriation or after the expiry of one year from the date of his ceasing to be Chairman, Trustee or Servant of trust, whichever is earlier."

Rule 4(3) of 1978 Rules:

Provided that no Chairman, Trustee or Servant shall be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or mis-

appropriation or after the expiry of one year from the time of his ceasing to be Chairman, Trustee or Servant of the trust,whichever is earlier."

(b) So, the loss according to the Trust, has been caused by the petitioner in the year 1976 by allotting shop to Piara Lal and the petitioner retired on 31.10.1995 and the present notice has been issued on 6.3.2006 i.e. about 20 years after alleged loss and about 9-1/2 years after the retirement of the petitioner. In Civil Writ Petition No.3404 of 1992 titled as **S.S.Seera Versus State of Punjab**, Civil Writ Petition No.17429 of 1991 titled **N.S.Brar Versus State of Punjab** and **State of Madhya Pradesh Versus Bani Singh,** AIR 1990 Supreme Court 1308, the departmental proceedings were quashed as the same were initiated after lapse of long delay.

© From the documents on the file, it is revealed that allotment of shop No.1 in Scheme No.37 was made in the year 1976. Piara Lal entered into an agreement to sell the said shop in favour of Gulshan Kumar, Ashok Kumar, Yashpal and Chander Mohan sons of Om Parkash vide agreement to sell dated 23.9.1977 and subsequent agreements dated 13.3.1978, 9.6.1978, 15.12.1978 and 30.6.1979. Said Gulshan Kumar etc. filed a suit for specific performance against Piara Lal and that suit was decreed vide judgment and decree dated 17.9.2004 passed by Shri R.N. Bharti, Civil Judge (Senior Division),

Karnal. Piara Lal preferred an appeal against the judgment dated 17.9.2004 and the same was dismissed by Shri Darshan Singh, Additional District Judge, Karnal vide judgment dated 20.9.2005. After having failed in the civil litigation, Piara Lal has filed an appeal before the Financial Commissioner and Principal Secretary to Government of Haryana, Urban Development Department, Chandigarh in the year 2004. The learned Financial Commissioner without taking into account allotment of plot in favour of Piara Lal,ordered the allotment of show room in Scheme No.37 to M/s Piara Lal Kuldip Kumar and also ordered initiation of proceedings against the guilty officers. The learned Financial Commissioner seems to have ignored the fact that the shop had already been allotted to Piara Lal. According to the petitioner, Piara Lal is the sole proprietor of firm M/s Piara Lal Kuldip Kumar and that Kuldip Kumar is the son of Piara Lal. Once Piara Lal had been allotted shop as per undertaking in Civil Writ Petition No.5370 of 1975, firm M/s. Piara Lal Kuldip Kumar was estopped from taking the plea that undertaking given in Civil Writ Petition No.5370 of 12975, has not been complied with. Otherwise also, one partner binds the firm by his act done in due discharge of business of partnership. The Hon'ble Apex Court in authority **Tanna & Modi Versus CIT, Mumbai, XXV and others,** (2007) 7 Supreme Court Cases 434 has held that the act of partner of firm vis-a-vis firm

has binding effect on the firm. A firm is conglomeration of its partners. It is not a juristic person. Under the Partnership Act, a partner represents a firm and has an implied authority in terms of Section 19 of the Act. Thus, the action taken by a partner unless otherwise specified, binds the firm. The learned Financial Commissioner while passing order dated 12.1.2006 has thrown away all the cannons of Limitation law.

In view of the above discussion, order dated 6.3.2006, Annexure P10, stands quashed.

The writ petition stands allowed in the above terms.

(K. C. Puri)
Judge

December 10, 2007.
Jaggi

(Satish Kumar Mittal)
Judge